

IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)  
AND  
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.6540/Mum/2019  
(Assessment year 2011-12)

ACIT-8(2)(1), Mumbai	vs	M/s Shimera Projects Lighting Pvt Ltd Unit No.5, Ground Floor, Raghuvanshi Mill Compound, S.B. Marg, Lower Parel, Mumbai-400 013 PAN : AALCS3050J
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	Shri Vijay Kumar Menon, (DR)
Respondent by	None

Date of hearing	29-06-2021
Date of pronouncement	29-07-2021

**ORDER**

**Per : Saktijit Dey (JM):**

This is an appeal by the revenue against order dated 31-07-2019 of learned Commissioner of Income Tax (Appeals)-14, Mumbai deleting the penalty imposed of Rs.80,761/- under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2011-12.

2. When the appeal was taken up for hearing, no one was present for the assessee. Considering the nature of dispute, we proceed to dispose of the appeal

ex parte qua the assessee after hearing the learned departmental representative and based on materials on record.

3. Briefly the facts are, the assessee is a resident company. For the assessment year under dispute, the assessee had filed its return of income on 30-09-2011 declaring total income of Rs.44,31,383/-. Subsequently, the assessing officer received information from the Sales-tax department through DGIT (Inv), Mumbai that the assessee is a beneficiary of accommodation bills provided by a party against non genuine purchases worth Rs.20,90,914/-. Based on such information, the assessing officer reopened the assessment under section 147 of the Act. In course of assessment proceedings, the assessing officer called upon the assessee to prove the purchases. Though, the assessee furnished copies of purchase bills and some other documentary evidences to prove the purchases; however, they were not to the satisfaction of the assessing officer. Therefore, he held the purchases as non genuine. However, considering the fact that assessee was able to establish the consumption of materials and sales effected, the assessing officer disallowed the profit element embedded in the alleged non-genuine purchases by estimating at 12.5%. Eventually, the assessing officer disallowed an amount of Rs.2,61,364/-. Based on such disallowance, the assessing officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income. Ultimately, assessing officer passed an order imposing penalty of Rs.80,761/-. Against the penalty order so passed, assessee preferred an appeal before learned Commissioner (Appeals). Being convinced with the submissions of the assessee, learned Commissioner (Appeals) deleted the penalty imposed under section 271(1)(c) of the Act.

4. We have considered the submissions of learned departmental representative and perused materials on record. It is evident, the assessing officer has treated certain purchases made by the assessee as non genuine. However, he has disallowed only the profit element embedded in such purchases. Thus, the aforesaid action of the assessing officer pre-supposes that he had no doubt that the goods representing such purchases, indeed, were available with the assessee, though, the source of such purchase remained unverified. Thus, the addition giving rise to imposition of penalty is on account of some amount of doubt and suspicion entertained by the assessing officer regarding the source of purchases. It is also a fact that such addition was made purely on estimate basis. Thus, in our considered opinion, the addition made based on doubt and suspicion, that too, purely on estimate basis cannot lead to the conclusion that the assessee has committed any offence as per section 271(1)(c) of the Act. Therefore, we agree with the decision of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act.

5. Even otherwise also, the tax effect on the amount disputed by the revenue in both these appeals is below the monetary limit of Rs.50 lakhs stipulated in CBDT circular No. 17/2019 dated 08<sup>th</sup> August, 2019. Having analysed the factual position, we are of the considered opinion that the present appeal of the revenue is not covered by any of the exceptions provided to the circular noted above, as, the penalty proceedings is an independent proceeding. Therefore, in our considered opinion the present appeal of the department is not maintainable. For this reason also, the appeal deserves to be dismissed. Accordingly, we do so.

6. In the result, the appeal is dismissed.

Order pronounced on 29/07/2021.

Sd/-

sd/-

<b>RAJESH KUMAR</b>	<b>SAKTIJIT DEY</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 29/07/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai